

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: THE RHODES COMPANIES,) E-Filed: 01/25/10
5 LLC,)
6 Debtor.) Case No.
7) BK-S-09-14814-LBR
8) Chapter 11
9
10

11 TRANSCRIPT OF PROCEEDINGS
12 OF

13 HEARING RE: MOTIONS

14 VOLUME 1

15 BEFORE THE HONORABLE LINDA B. RIEGLE
16 UNITED STATES BANKRUPTCY JUDGE

17 Thursday, January 14, 2010

18 9:00 a.m.

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22
23 Court Recorder: Liberty Ringor

24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 APPEARANCES:

2 For the Debtor:

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8 For the First Lien
9 Steering Committee:

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14 For James Rhodes:

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17 For the Unsecured
18 Creditors Committee:

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20 For Credit Suisse,
21 Cayman Islands Branch:

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1 APPEARANCES (Cont.):

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6 For Stanley JANIECE S. MARSHALL, ESQ.
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9 For the United States VIRGINIA CRONAN LOWE, ESQ.
10 Internal Revenue Department of Justice
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(Telephonic)

13 Also Present: JAMES RHODES
Creditor

14 BRIAN OSBORNE
15 Solicitation Agent
(Telephonic)

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1 (Court convened at 09:05:53 a.m.)

2 THE CLERK: All rise.

3 (Colloquy not on the record.)

4 THE CLERK: Bankruptcy court is now in session.

5 (Colloquy not on the record.)

6 THE COURT: Excuse me.

7 Be seated.

8 (Colloquy not on the record.)

9 THE COURT: All right. Rhodes Companies.
10 Appearances, please.

11 (Colloquy not on the record.)

12 MR. STANG: Good morning, your Honor. James Stang
13 and Shirley Cho, Pachulski, Stang, Ziehl & Jones, appearing for
14 the debtors, and Mr. Rhodes is in court today.

15 MR. DUBLIN: Good morning, your Honor. Phil Dublin
16 and Meredith Lahaie from Akin, Gump, Strauss, Hauer & Feld on
17 behalf of the First Lien Steering Committee.

18 MR. LEATHAM: Good morning, your Honor. Nile Leatham
19 also for the First Lien Steering Committee.

20 MR. LARSON: Good morning, your Honor. Zach Larson,
21 local counsel on behalf of the Rhodes Companies.

22 MR. AXELROD: Good morning, your Honor.
23 Brett Axelrod, Greenberg Traurig, for Mr. Rhodes.

24 MR. BECKETT: Good morning, your Honor. Tom Beckett,
25 Parsons, Behle & Latimer in Salt Lake, for the

1 Unsecured Creditors Committee.

2 MR. MacROBBIE: Good morning, your Honor.

3 James MacRobbie of Sylvester & Polednak and Ray Naguiat of
4 Skadden, Arps, Slate, Meagher & Flom on behalf of the
5 Credit Suisse, Cayman Islands Branch as agent for the first
6 lien lenders.

7 THE COURT: Okay.

8 (Colloquy not on the record.)

9 THE COURT: All right. Before we start on the
10 agenda, as far as the planning goes, I think we have an
11 insurmountable problem that will prevent us from going forward
12 today. The exhibits were not attached to the disclosure
13 statement on file.

14 MR. DUBLIN: Phil Dublin, Akin, Gump, for the
15 First Lien Steering Committee. We filed all of the exhibits to
16 the disclosure statement, your Honor.

17 THE COURT: When?

18 MR. DUBLIN: I'm not sure --

19 THE COURT: They weren't attached to the disclosure.
20 And if I'm wrong, go on the docket sheet and show me.

21 (Colloquy not on the record.)

22 MR. DUBLIN: Your Honor, following the
23 disclosure-statement hearing, we had a couple of minor
24 modifications that were made to the disclosure statement, so
25 there were no changes to the previously-filed exhibits which

1 were filed with the prior version of the disclosure statement.

2 All of the exhibits were served with the disclosure
3 statement when we sent it out for voting. So to ease the
4 burden on the clerk and on the docket, we did not refile all of
5 the documents that had previously been filed.

6 THE COURT: Shouldn't you have referenced that in the
7 amended disclosure statement?

8 MR. DUBLIN: Well, they are referenced as exhibits to
9 the disclosure statement that was served on all of the voting
10 parties, so all of the exhibits were actually attached to the
11 disclosure statement when it was served --

12 THE COURT: All right.

13 MR. DUBLIN: -- for voting, so it was included with
14 all of this. All of the exhibits were included with the
15 solicitation materials, so I didn't think that --

16 THE COURT: All right.

17 MR. DUBLIN: -- at that point it was (indiscernible).

18 All of the creditors entitled to vote on the plan received
19 the disclosure statement, received the plan, received all of
20 the exhibits. That there wasn't anything necessarily to
21 annotate on what was actually circulated since everything was
22 there.

23 THE COURT: Well, the problem is you say in your
24 disclosure statement to look on Omni's Web site. And when you
25 go to Omni's Web site, you look at the disclosure statement

1 that was the last disclosure statement approved, and there's no
2 exhibits attached, and it says they are.

3 MR. DUBLIN: Well, your Honor, they are. They were
4 on file with the disclosure statement that was filed, but I
5 don't have the exact date. Probably, a week before.

6 THE COURT: But it says they're attached. That's
7 what your disclosure statement says.

8 MR. DUBLIN: I understand, your Honor. They were
9 attached to -- when people received their copies of the
10 disclosure statement, they were attached. They had copies of
11 the exhibits with the solicitation materials.

12 So everything that went out to those creditors voting on
13 the plan, they had all of the exhibits that say they are
14 attached. They were attached when that document went out.

15 THE COURT: Okay.

16 MR. DUBLIN: And Brian Osborne who was the
17 solicitation agent is on the phone and can verify that,
18 your Honor.

19 MR. OSBORNE: This is Mr. Osborne. Yes. That I can
20 verify that they were served with the declaration and with the
21 exhibits that were attached to the disclosure statement.

22 THE COURT: All right. Now, where would I find those
23 exhibits?

24 MR. DUBLIN: They're all on the docket.

25 THE COURT: I want to know the docket entry --

1 MR. DUBLIN: Okay.

2 THE COURT: -- so that I can find them, and so I can
3 assess that other people were able to find them, too.

4 MR. DUBLIN: Okay. Can I have a moment --

5 THE COURT: Yes.

6 MR. DUBLIN: -- your Honor?

7 THE COURT: Please.

8 MR. DUBLIN: Thank you.

9 (Pause at 09:10:19 a.m.)

10 (Colloquy not on the record.)

11 (Pause concluded at 09:10:47 a.m.)

12 THE COURT: They are not attached to the second
13 amended which was 774.

14 (Colloquy not on the record.)

15 MR. DUBLIN: Your Honor, it is likely with 713, but
16 we are just confirming.

17 (Pause at 09:11:06 a.m.)

18 (Colloquy not on the record.)

19 (Pause concluded at 09:12:08 a.m.)

20 MR. DUBLIN: Your Honor, while we're confirming that
21 information, would you like to go forward with the
22 claims-objections portions of the dockets --

23 THE COURT: No.

24 MR. DUBLIN: -- so that --

25 THE COURT: Let's --

1 MR. DUBLIN: Okay. I'm sorry.

2 THE COURT: But thank you. Now, there are exhibits
3 attached to that, but I have no way of knowing if those were
4 the final exhibits.

5 MR. DUBLIN: Those are the exhibits, your Honor --

6 THE COURT: All right.

7 MR. DUBLIN: -- I can represent to the Court.

8 THE COURT: So no names were added. Now, let's see.
9 When we did the first hearing -- let's see -- I think they were
10 blank. What did I say, 713?

11 (Colloquy not on the record.)

12 THE COURT: They're certainly not in a very
13 user-friendly format because you can't go to one exhibit.

14 (Colloquy not on the record.)

15 THE COURT: And it appears -- well, was there
16 anything attached to 713? Who's looking?

17 MR. DUBLIN: I --

18 THE COURT: Is anybody looking?

19 MR. DUBLIN: I asked my colleague, Ms. Lahaie, to go
20 back out outside the courtroom to make a phone call to confirm
21 that, your Honor.

22 THE COURT: Don't any of you have your wireless here?

23 MR. DUBLIN: We're not allowed to turn them on in the
24 courtroom --

25 THE COURT: Yeah, you are.

1 MR. DUBLIN: -- is all.

2 THE COURT: Nobody's ever said you couldn't.

3 MR. DUBLIN: I had my --

4 THE COURT: Did you ever tell them they couldn't turn
5 on their wireless?

6 THE CLERK: Tell them what?

7 THE COURT: Their wireless computers?

8 MR. DUBLIN: Oh, wireless computer.

9 THE CLERK: No.

10 MR. DUBLIN: Oh, I'm sorry.

11 THE CLERK: (Indiscernible).

12 THE COURT: Yeah.

13 MR. DUBLIN: Okay. Excuse me.

14 THE CLERK: (Indiscernible).

15 (Colloquy not on the record.)

16 THE COURT: Yeah. Right. You can't have your phones
17 on, but you can have your computer on. I mean, I do see a
18 number of exhibits as No. 713.

19 But, you know, you did your later disclosure statements
20 reporting to have them attached, and they never were attached,
21 and there's no reference to them. It says without exhibits.

22 MR. DUBLIN: Right. We apologize, your Honor. In
23 that there were no changes to the exhibits, we filed it without
24 exhibits, but then, again, when we solicited we included all of
25 the exhibits.

1 THE COURT: Well, when you did your final order
2 approving, you should include your exhibits there, the 798, and
3 it doesn't say without exhibits on the one you filed
4 December 1.

5 And your document refers to all these exhibits. So if I
6 was a creditor and wanted to go on-line and look at these
7 exhibits, where would I know to look?

8 MR. DUBLIN: I understand the concern, your Honor.
9 People would -- or, obviously, all of our contact information
10 and the claims agent's contact information are in the
11 disclosure statement.

12 And if all creditors were entitled to vote on the plan,
13 they received all of the exhibits themselves. They were
14 actually delivered to them in connection with their voting
15 materials.

16 THE COURT: Okay.

17 MR. DUBLIN: So there was no need --

18 THE COURT: So --

19 MR. DUBLIN: -- for that ever to go onto the docket.

20 THE COURT: The certificate of service on file
21 doesn't say which document was served I don't believe.

22 MR. DUBLIN: Your Honor, the document that was served
23 is 798. That's the second amended modified disclosure
24 statement.

25 And then all of the exhibits to that document, the second

1 amended modified plan, the credit agreement, the operating
2 agreement, the going-concern analysis, the liquidation
3 analysis, the -- and I'm just rattling off.

4 All of those documents were included with that disclosure
5 statement when it was served on creditors with their
6 solicitation packages, the disclosure-statement order, all of
7 the applicable ballots --

8 THE COURT: Well, I understand that.

9 MR. DUBLIN: -- and notices.

10 THE COURT: But it's the problem with the exhibits,
11 and where does the certificate say -- and it may. Where does
12 the certificate say that it served all the exhibits?

13 MR. DUBLIN: It may not specifically say that the
14 exhibits were included, your Honor, but I'm representing to the
15 Court that they were included.

16 THE COURT: But did you mail them?

17 MR. DUBLIN: No. Omni did, and Mr. Osborne --

18 THE COURT: So you don't know.

19 MR. DUBLIN: -- just --

20 THE COURT: Did you ever look to see whether anybody
21 got mail?

22 MR. DUBLIN: I spoke to Mr. Osborne --

23 THE COURT: Did you --

24 MR. DUBLIN: -- who is our --

25 THE COURT: -- ever look --

1 MR. DUBLIN: Well, I --

2 THE COURT: -- at --

3 MR. DUBLIN: I didn't --

4 THE COURT: -- any package --

5 MR. DUBLIN: I --

6 THE COURT: -- to see what --

7 MR. DUBLIN: I did not --

8 THE COURT: -- was included?

9 MR. DUBLIN: -- your Honor, as we're located in
10 New York.

11 THE COURT: Well, then how can you tell me --

12 MR. DUBLIN: Because Mr. Osborne has certified that
13 he has done so.

14 THE COURT: Okay.

15 MR. DUBLIN: And he is representing to the Court --

16 THE COURT: But you --

17 MR. DUBLIN: -- as well.

18 THE COURT: -- can't tell me that.

19 MR. DUBLIN: That is correct, your Honor. Based on
20 representations made to me, I'm advising you that it was --

21 THE COURT: I think --

22 MR. DUBLIN: It was included.

23 THE COURT: -- the word "hearsay" is what comes to
24 mind.

25 MR. DUBLIN: Well, and Mr. Osborne again is on the

1 phone and can --

2 THE COURT: Okay.

3 MR. DUBLIN: -- clarify that, your Honor.

4 THE COURT: So, Mr. Osborne, what evidence do I have
5 that the exhibits were served?

6 MR. OSBORNE: Your Honor, the only evidence on file
7 is the certificate of service. That, however, I can put into
8 the record that the documents -- the disclosure statement was
9 served with the exhibits.

10 I do have the declarant of the affidavit of service here
11 with me, and she could there testify to and also put into the
12 record that the disclosure statement was served with all of the
13 exhibits attached.

14 THE COURT: All right. Well, you're going to have to
15 amend your certificate, and it says it was done on a CD-ROM
16 format, so do we have the CD-ROM in evidence?

17 MR. OSBORNE: I'm not sure if the CD -- I'm not sure
18 if the CD-ROM isn't attached, but we will include it as an
19 attachment, and we will hard-file service the document with a
20 CD-ROM.

21 THE COURT: Okay. All right. I'll rely on that
22 declaration, and it better be the case.

23 MR. DUBLIN: Thank you, your Honor.

24 THE COURT: All right. I guess we'll do objections
25 first and then go to the plan.

1 MR. DUBLIN: I'm sorry. On the claim objections?

2 THE COURT: Yes.

3 MR. DUBLIN: Oh, I'll accede the podium to Ms. Cho.

4 (Colloquy not on the record.)

5 MS. CHO: Good morning, your Honor. Shirley Cho of
6 the Pachulski, Stang firm for the debtors --

7 THE COURT: Okay.

8 MS. CHO: -- with respect to matter No. 2 on the
9 agenda --

10 (Colloquy not on the record.)

11 MS. CHO: -- the debtor's omnibus objection to the
12 Cabinetech claims.

13 THE COURT: Um-h'm.

14 MS. CHO: With respect to these claims, your Honor,
15 we are merely seeking to reclassify the secured claims to
16 general unsecured claims and to disallow a duplicate third
17 claim which combined the previous two claims.

18 THE COURT: And you've had no response, correct?

19 MS. CHO: Correct, your Honor.

20 THE COURT: All right. So that's sustained.

21 MS. CHO: Thank you --

22 THE COURT: Next --

23 MS. CHO: -- your Honor.

24 THE COURT: -- we have the Water District claims.

25 MS. CHO: With respect to these claims, your Honor,

1 we're seeking to disallow two duplicate claims and to allow a
2 third claim which contained the invoices for the two duplicate
3 claims, but to reduce that third claim as indicated in the
4 exhibit.

5 THE COURT: Okay. And you have not had a response.

6 MS. CHO: Correct, your Honor.

7 THE COURT: All right. So that's sustained.

8 MS. CHO: Thank you.

9 THE COURT: And the next is the IRS claims, and I
10 understand that's being continued.

11 MS. CHO: Correct, your Honor. We would request that
12 this be continued to the February 18th hearing at 1:30 p.m.
13 This is the trailing objection, your Honor, and we're --

14 THE COURT: Okay.

15 MS. CHO: There's really nothing to do except to wait
16 for a return to be processed.

17 THE COURT: Okay. So we had a new date on that
18 stipulation, correct?

19 MS. CHO: Correct.

20 THE COURT: Okay. All right. So it's continued to
21 that date.

22 MS. CHO: Thank you --

23 THE COURT: And we'll skip --

24 MS. CHO: -- your Honor.

25 THE COURT: -- the compensation for a moment.

1 Now let's go to No. 7.

2 MS. CHO: What --

3 THE COURT: These are books and records.

4 MS. CHO: That's --

5 THE COURT: The fifth objection to claims.

6 MS. CHO: Oh, with respect to this claim, your Honor,
7 this was continued with respect to three claims I believe to
8 allow the debtors to supplement the basis for the objection.
9 We did file the supplement on January 4th, and we have received
10 no response.

11 THE COURT: Well, why is the supplement so late?

12 MS. CHO: Pardon?

13 THE COURT: Why is the supplement so late?

14 MS. CHO: I guess we could continue it out to
15 February 18th to allow the 30 days, but we did file the
16 original objection in November.

17 And we had received no response to the objection in
18 November, so your Honor directed at the December 17th hearing
19 that we file the supplemental. With the intervening holidays,
20 we did file it immediately after the new year.

21 THE COURT: Well, let's continue this one out.

22 MS. CHO: Okay.

23 THE COURT: Let's go 30 days or the next hearing.

24 THE CLERK: (Indiscernible) February 18th at 1:30.

25 MS. CHO: Thank you --

1 THE COURT: Okay.

2 MS. CHO: -- your Honor.

3 THE COURT: Thank you.

4 Then we have the IRS. This relates to the other one,
5 correct --

6 MS. CHO: Correct.

7 THE COURT: -- No. 8?

8 MS. CHO: The second omnibus.

9 THE COURT: Okay.

10 MS. CHO: With respect to this omnibus, your Honor,
11 you had requested that we use today as a status conference.
12 The parties in the meantime had been able to enter into a
13 request for a waiver of filing of discovery plan which was
14 filed at Docket No. 910.

15 THE COURT: Okay.

16 MS. CHO: And we would request that February 18th at
17 1:30 be used as the final pretrial conference. In the
18 meantime, the parties are engaged in discussion to resolve the
19 objection.

20 THE COURT: So you just want the 18th again as a
21 scheduling conference.

22 MS. CHO: Correct.

23 THE COURT: Okay. All right.

24 MS. LOWE: I just wanted to let the Court know this
25 is Virginia Lowe from the Department of Justice representing

1 the IRS, and I'm on the telephone.

2 THE COURT: All right. Thank you.

3 MS. LOWE: Thank you.

4 THE COURT: So February 18th will just be a
5 scheduling conference, correct?

6 MS. LOWE: Yes, it will.

7 THE COURT: Do you want us to give you a trial date
8 now or do you think that you'll --

9 MS. LOWE: Actually, we would like to wait 'til
10 February because by then we'll have narrowed down the issues
11 with particularly to let the Court know how much time we'll
12 need.

13 THE COURT: Okay. All right. Thank you.

14 Then we had the motion to extend time. We should probably
15 wait 'til we see what we do on plan confirmation.

16 And item No. 10, that follows plan confirmation as well,
17 doesn't it, and 11? All right.

18 So let's go to plan confirmation.

19 (Colloquy not on the record.)

20 MR. DUBLIN: Thank you. Again, for the record,
21 Phil Dublin, Akin, Gump, on behalf of the First Lien Steering
22 Committee.

23 THE COURT: Let me tell you what my problem is, and I
24 may have you do additional briefing. And when we had our
25 conference call, I don't think I was aware that the unsecured

1 class had rejected the plan.

2 You have given lip service in your brief as to cram-down
3 because you said no junior class is receiving anything. But in
4 reality, the Rhodes entities are receiving all the assets of
5 the Arizona entities.

6 Now, since I hadn't been blessed with knowing the
7 organizational chart and the liquidation analysis, since I
8 didn't realize it was the one that was filed three times
9 before, I wasn't really able to do an independent analysis, but
10 I don't understand why this isn't really just a LaSalle
11 problem.

12 In other words, what you've done is you've only given the
13 insiders the opportunity to buy those assets. Why isn't that a
14 cram-down problem?

15 MR. DUBLIN: Thank you, your Honor. The insiders are
16 not -- the nondebtor Rhodes entities are not receiving any
17 consideration in respect of their old equity interests.

18 As you're aware and as we've discussed at a number of
19 hearings, based on the Court-ordered mediation that was held in
20 August in front of Judge Neider that we had in Los Angeles -- I
21 believe the dates were the 17th, 18th, and 25th of August --
22 attendance at attending the mediation were the debtors, the
23 nondebtor Rhodes entities, the creditors committee, the first
24 lien agent, the second lien agent, and the First Lien Steering
25 Committee.

1 We had extensive negotiations in accordance with the
2 Court's order to have a good-faith mediation process to see if
3 we could resolve the issues that we all saw that were
4 preventing this company from emerging from Chapter 11 both
5 primarily of our operational nature in that Mr. Rhodes held so
6 many positions with the debtors that we needed his cooperation
7 in order to emerge from Chapter 11 with respect to qualified
8 employees, bonding issues, homeowners-association issues, all
9 of the issues material to operating a homebuilder in
10 Las Vegas County (sic).

11 Mr. Rhodes was the person that had all or still continues
12 to have all of the necessary licenses and operational authority
13 to operate the debtor entities and their homebuilding
14 operations.

15 The terms of the mediation which we go to in-depth in the
16 disclosure statement which provide for limited consideration
17 going to the nondebtor Rhodes entities in respect of the
18 contributions that they are going to make going forward to the
19 reorganized debtor, so that we can continue to have or hope to
20 have a prosperous homebuilding enterprise in the county are he
21 will be contributing three-and-a-half-million dollars in cash.

22 He will be providing the necessary services, so that we
23 can transition our qualified employees. He will remain on the
24 bonds that the company needs to continue to operate with
25 respect to building homes in the county.

1 He will assist in connection with the
2 homeowners-association seats and the transfer of those seats to
3 new employees at the reorganized debtors and all of the other
4 items that are set forth in the disclosure statement.

5 That in exchange as you may recall the Arizona assets that
6 he's receiving that are commonly referred to as Pravada among
7 the group that's on this side of the bench is the middle of the
8 doughnut hole at a location in Arizona where there is no --
9 there are a couple of spec homes that have been built or model
10 homes, but there's just not a sprawling metropolis of
11 residential communities.

12 It had a value, a negligible value, as far as the
13 reorganized debtor's ongoing operations as we've set forth in
14 the disclosure statement.

15 And Mr. Rhodes owns all of the surrounding area and the
16 infrastructure for the surrounding area around this little
17 doughnut hole.

18 It was not an asset that the reorganized debtors wanted to
19 retain going forward, viewed it more as a liability with
20 respect to some spec rating that had been performed in the
21 Pravada area as well as some other construction.

22 It was something that we would have likely sought to
23 either abandon or sell to some other party, though there would
24 be no other buyer for the doughnut hole considering that
25 Mr. Rhodes owns everything surrounding it.

1 Therefore, as part of the Court-ordered mediation
2 settlement, among the consideration that we agree to sell to
3 Mr. Rhodes for the three-and-a-half-million dollars of
4 consideration and all of the other benefits he was going to
5 provide to the reorganized debtors on a go-forward basis,
6 including the transfer to the debtors or the reorganized
7 debtors of the Rhodes Ranch Golf Course which is at the center
8 of one of the debtor's two primary communities, Tuscany which
9 has its own golf course and Rhodes Ranch, there was substantial
10 value given by Mr. Rhodes separate and apart from his old
11 equity interest for which he is receiving no recovery
12 whatsoever.

13 Therefore, there is nobody receiving on account of any
14 claim or interest that they hold in the debtors, any recovery
15 on account of those claims or interests junior to a class that
16 has voted not to accept the plan.

17 THE COURT: Well, but you're only giving them the
18 opportunity to buy that Pravada asset.

19 MR. DUBLIN: Well, in --

20 THE COURT: And they're getting their --

21 MR. DUBLIN: As --

22 THE COURT: It doesn't make any difference what -- I
23 mean, the first step, I don't understand why you say they're
24 not receiving or retaining on account of the plan. They are.
25 Now the question is you may have to do a new-value analysis,

1 and I don't think you've done that.

2 MR. DUBLIN: I'm sorry, your Honor. I didn't hear --

3 THE COURT: You didn't --

4 MR. DUBLIN: -- your last comment.

5 THE COURT: -- go through your new-value analysis in
6 your pleading. I mean, on account of -- the point is -- and
7 let me -- they're receiving an opportunity because they held
8 that property that nobody else is getting.

9 MR. DUBLIN: Well, just like any debtor that files
10 for bankruptcy, bankruptcy is a public forum. And,
11 automatically, when a debtor files for bankruptcy, the debtor
12 is in play. It's the information is out there that people are
13 trying to restructure this business. They're trying to
14 maximize --

15 THE COURT: But nobody else got the opportunity to
16 engage in this stock transfer of the Arizona assets. The
17 exclusivity never expired. The option wasn't open, and they're
18 receiving the assets of the -- what was the name of the Arizona
19 debtor?

20 MR. DUBLIN: There are three Arizona debtors,
21 your Honor.

22 THE COURT: So they're receiving all of the assets of
23 the Arizona debtors.

24 MR. DUBLIN: Not all of the assets. The homebuilding
25 assets --

1 THE COURT: The homebuilding assets.

2 MR. DUBLIN: -- and some additional dogs-and-cat
3 type.

4 THE COURT: Okay. So why doesn't that trigger, A,
5 whether or not there is a new-value exemption -- there probably
6 is in the Ninth Circuit -- and then, secondly, the analysis
7 based upon that.

8 MR. DUBLIN: Again, your Honor, the valuation that
9 was placed on Pravada were the Arizona assets by the First Lien
10 Steering Committee.

11 And I just have to just check with Winchester Carlisle
12 here, but I think it was something around \$100,000. It was not
13 something that we had prescribed any value to.

14 Also -- I'm sorry -- the plan exclusivity did expire. It
15 expired by stipulation among the parties upon the initial
16 120-day period.

17 THE COURT: Oh, so it did expire.

18 MR. DUBLIN: Yes.

19 THE COURT: You did not extend it.

20 MR. DUBLIN: I'm sorry.

21 THE COURT: Okay.

22 MR. DUBLIN: So that did expire. While there was a
23 stipulation among the debtors, the First Lien Steering
24 Committee, the creditors committee, the first lien agent, and
25 the second lien agent that none of us would file a plan that

1 would impede with the mediation, that was not binding on any
2 third party.

3 So if anybody else wanted to come in and propose a plan
4 for the debtor or make a bid for the debtor's assets, people
5 were permitted to do so, and we did.

6 There were times where unsolicited interest did come in
7 for some of the debtor's assets at values that were
8 significantly below even the deflated market value that we
9 currently have in Las Vegas.

10 So those requests were declined because value was going to
11 be maximized through the plan and the mediation settlement that
12 is in front of you today.

13 THE COURT: But you could see they are -- I mean,
14 there is a sale to them of the Arizona assets. They're getting
15 the Arizona assets back.

16 MR. DUBLIN: They will be receiving the Arizona
17 assets, correct, as part of a consideration in connection with
18 the mediation settlement, but which has been all of those terms
19 public for many months now.

20 THE COURT: Right. But your problem is you've got a
21 class that's rejected. It doesn't make any difference whether
22 it's public or nonpublic. You now have a rejecting class.

23 You have to prove that you can meet the confirmation
24 standards of cram-down, so it doesn't make any difference it's
25 been out there forever or not. You've got to prove you meet

1 cram-down.

2 MR. DUBLIN: Correct, your Honor. And, again, the
3 Arizona assets that are going to Mr. Rhodes are not on account
4 of his old equity interests.

5 He doesn't have the right to -- he's not buying those
6 assets because he was old equity. He's buying those assets
7 because of -- he's paying the purchase price that he's paying
8 plus providing additional consideration to the reorganized
9 debtors on a go-forward basis as I mentioned, so that they can
10 continue their homebuilding assets.

11 THE COURT: Well, why wasn't this 3.5 million in
12 consideration for the alleged fraudulent transfers,
13 preferences, et cetera, that happened within those two years
14 that are now being released?

15 MR. DUBLIN: Right. Well, it's a global settlement,
16 so it's the aggregate consideration going among the parties is
17 it was incorporated into the settlement.

18 There's no specific dollar number per se that you can
19 assign to any one item. When you have a global settlement,
20 there is give-and-take in order to reach the settlement --

21 THE COURT: Well, what was --

22 MR. DUBLIN: -- that you have --

23 THE COURT: -- the total value --

24 MR. DUBLIN: -- among the parties.

25 THE COURT: -- of the alleged fraudulent -- the

1 actions that were released --

2 MR. DUBLIN: Well, when --

3 THE COURT: -- under --

4 MR. DUBLIN: When you --

5 THE COURT: -- the plan?

6 MR. DUBLIN: When you say, the "aggregate" dollar
7 amount of the transactions --

8 THE COURT: Excuse me. And that's a better word,
9 yes.

10 MR. DUBLIN: -- equates to approximately I believe
11 \$9,000,000.

12 However, as we did an analysis of those transactions to
13 see if they were valid defenses, ordinary-course-of-business
14 defense, new-value defense, and taking all of that into
15 consideration based on a review of the company's books and
16 records, it was determined by the parties that we have a fair
17 and reasonable settlement to waive those specific claims.

18 Now, if there's something that's undisclosed, those are
19 not being waived. It is only the transfers --

20 THE COURT: I --

21 MR. DUBLIN: -- that we have the ability to go back
22 and review which we did to make sure that we were comfortable
23 when you take into account litigation costs, collectability,
24 and defenses that the aggregate consideration that was being
25 provided by the nondebtor Rhodes entities to the reorganized

1 debtors is fair and equitable and in the best interest to
2 maximize creditor recoveries in connection with this
3 restructuring.

4 THE COURT: Okay. All right. Well, I think you
5 better call your witnesses, then.

6 MR. DUBLIN: Okay. We submitted, your Honor,
7 declarations, two declarations, in support of confirmation.

8 THE COURT: Well, Mr. Dixon's (sic) affidavit isn't
9 worth a lot. Let me pull that. Just because somebody told him
10 that cram-down is met isn't exactly -- Mr. Dix. All right. So
11 do you have any witnesses other than these declarations?

12 MR. DUBLIN: We do not, your Honor.

13 THE COURT: Okay. Does anyone else have any other
14 witnesses?

15 MR. DUBLIN: Your Honor, I would like to note for the
16 record that both of the pleadings that were filed in opposition
17 there was a conditional objection filed by Caterpillar as well
18 as the CS limited response. Yesterday evening, CS withdrew
19 that response, so that is no longer before your Honor.

20 THE COURT: Well --

21 MR. DUBLIN: And --

22 THE COURT: -- what was given to Credit Suisse in the
23 meantime? What are you doing?

24 MR. DUBLIN: Nothing.

25 THE COURT: Are you --

1 MR. DUBLIN: Nothing, your Honor.

2 THE COURT: All right.

3 MR. DUBLIN: No changes.

4 THE COURT: So you're not going to keep the reserve.

5 MR. DUBLIN: Nothing.

6 THE COURT: Okay.

7 MR. DUBLIN: Correct. And Caterpillar was
8 comfortable with the resolution that I referenced on the call
9 that we had last week as well as we noted in our brief which is
10 that they will either receive their equipment or another
11 arrangement that's acceptable to them will be made whether we
12 want to purchase it --

13 THE COURT: Okay.

14 MR. DUBLIN: -- or the like, so they no longer have
15 an objection to the plan.

16 THE COURT: Okay. Now, since the unsecured creditors
17 have voted against the plan, is the committee still in support
18 of the plan?

19 MR. BECKETT: The committee is still in support of
20 the plan, your Honor, yes.

21 THE COURT: Is the committee the members whose claims
22 are being bought? How many of the members of the committee are
23 those people whose claims are being bought in accordance with
24 that agreement?

25 MR. BECKETT: Two of four.

1 THE COURT: Two of four. Okay.

2 MR. BECKETT: And the committee is in its entirety
3 supportive of the plan.

4 THE COURT: Okay.

5 MR. DUBLIN: Your Honor, I would like to note for the
6 record that in connection with the voting on the plan the
7 reason -- we did satisfy with respect to the unsecured-creditor
8 class the numerosity requirement. We do have two-thirds that
9 voted in favor.

10 The two objectors or the two claims that voted to reject
11 that resulted in us not reaching the dollar-number threshold
12 are two contingent litigation claims for which the company
13 believes it has no liability.

14 The dollar numbers that were asserted by
15 Stanley Engineering and a class, a noncertified class of
16 homebuilders, are just numbers that those parties have put down
17 an amount on a piece of paper as to what they believe the
18 estate's liability is. Those are not liquidated claims. They
19 are far from it, and --

20 THE COURT: But there were no objections filed.

21 MR. DUBLIN: Well, the Stanley Engineering claim is
22 the subject of a pending litigation.

23 THE COURT: But do you agree or disagree they're
24 entitled to vote?

25 MR. DUBLIN: They are entitled to vote, your Honor.

1 THE COURT: Okay.

2 MR. DUBLIN: I was just advising you as to the
3 limited number of unsecured creditors --

4 THE COURT: Okay.

5 MR. DUBLIN: -- that voted. There were only 15 valid
6 ballots.

7 There was an additional one which was voted to accept, but
8 it was a claim that had previously been withdrawn. So, of
9 course, we did not count that claim.

10 THE COURT: Okay. Now, in the Kitec filing, you
11 haven't objected to their claim?

12 (Colloquy not on the record.)

13 MR. DUBLIN: Excuse me, your Honor.

14 THE COURT: Um-h'm.

15 (Colloquy not on the record.)

16 MR. DUBLIN: Your Honor, the debtors have been
17 primarily responsible for the claims reconciliation, so I'm
18 going to ask --

19 THE COURT: Okay.

20 MR. DUBLIN: -- Ms. Cho to address that.

21 THE COURT: Um-h'm.

22 MS. CHO: Your Honor, with respect to the Kitec
23 claim, there was a relief-from-stay motion or it might have
24 been a 9019 motion which at some point modified and reduced
25 that claim down by about \$300,000 with respect to the settling

1 homeowners.

2 With respect to the remainder of the homeowner claims, we
3 are in discussions with the insurance company and with outside
4 counsel to resolve the claims, so we have not filed the
5 objection or resolution --

6 THE COURT: Okay.

7 MS. CHO: -- because it's not ripe, yet.

8 THE COURT: So everybody agrees that we have a valid
9 rejecting class, though.

10 MR. DUBLIN: Your Honor, with the specific procedures
11 that were approved by the Court in connection with the
12 disclosure statement, we could have taken the position that
13 since those claims are not allowed claims, but disputed claims,
14 and the creditors did not come forth to seek to vote their
15 claims in a specific dollar amount that we could have reduced
16 their dollar numbers to \$1, counted their ballot, but reduced
17 the claim number to \$1.

18 We did not see the need to go through that process as we
19 did have the four other classes that overwhelming voted to
20 accept the plan and in our view still satisfy the requirements
21 of 1129(b) to confirm the plan today.

22 THE COURT: All right. Well, that's your view. I
23 want some additional briefing and on your ability of cram-down
24 and incorporate it with the evidence that I have in the record.

25 And on one hand, I guess this may be a curve ball in light

1 of our conference last week, but, A, I wasn't advised that at
2 that time I don't believe that there was a rejecting class.

3 And then, secondly, the Court can't confirm a plan if
4 there's a rejecting class unless the debtor meets certain
5 requirements, so it doesn't require an objection, a filed
6 objection, to bring that to a head, and you may well be right.

7 But I'm just reticent especially since I didn't have the
8 benefit of any of these exhibits because I didn't I guess have
9 enough sense just to look back five disclosure statements ago.

10 MR. DUBLIN: And I apologize, your Honor.
11 Your Honor, is it possible if we take a few minutes, and I go
12 back to the specific provisions of the disclosure statement
13 to --

14 THE COURT: No. I want you to lay it out in the
15 brief, and I want you to address it, rather than it's just this
16 half-hand, oh, well, we haven't provided anything to the -- we
17 said in there that no junior class gets anything. That doesn't
18 cut it.

19 You know, just to say that no junior class gets anything
20 is form over substance, and I want you to look at the
21 substance.

22 So I'll do this as quickly as you want, but I want some
23 authority on this in light of the specific -- I mean, this is a
24 serious issue.

25 We've got a situation in which a debtor which your client

1 accused of all kinds of skullduggery is contributing
2 3.5 million and getting all of these assets back.

3 MR. DUBLIN: There, again, your Honor, they're not --

4 THE COURT: And I --

5 MR. DUBLIN: -- getting --

6 THE COURT: And it may well -- and, you know, you
7 have a settlement component, too. I believe you've probably
8 satisfied the A&C Properties test.

9 But it was hard to tell which elements were part of the
10 settlement, and I guess it was all a part of the settlement as
11 opposed to the asset and purchase agreement.

12 That was what was unclear to me because on one hand you
13 had the settlement which dealt with the homeowners associations
14 and the release of claims, but the bonds, and then you have the
15 stock-transfer agreement which I was unclear to what extent
16 that's a part of the settlement or a separate --

17 MR. DUBLIN: It's just --

18 THE COURT: -- negotiation.

19 MR. DUBLIN: -- the document that's going to
20 implement the settlement, your Honor.

21 THE COURT: Oh, okay. Okay. Well --

22 MR. DUBLIN: And, your Honor, we do have the
23 provisions in the disclosure statement that allow us to
24 requantify those disputed claims at \$1.

25 If I may, can I have a few minutes to look back over those

1 provisions and make that argument in front of you this morning
2 to see if we can confirm the plan today?

3 THE COURT: All right.

4 MR. DUBLIN: And then we --

5 THE COURT: I'll let you look --

6 MR. DUBLIN: -- would have --

7 THE COURT: -- at that.

8 MR. DUBLIN: And we will have an -- all of our
9 classes will accept at that point.

10 THE COURT: Okay. I'll let you look at that.

11 MR. DUBLIN: Thank you, your Honor.

12 THE COURT: All right.

13 (Colloquy not on the record.)

14 THE CLERK: All rise.

15 (Recess at 09:43:10 a.m.)

16 (Court reconvened at 10:12:24 a.m.)

17 THE CLERK: All rise.

18 (Colloquy not on the record.)

19 THE CLERK: Bankruptcy court is back in session.

20 (Colloquy not on the record.)

21 THE COURT: Be seated.

22 MR. DUBLIN: For the record, Phil Dublin, Akin, Gump,
23 on behalf of the First Lien Steering Committee. Your Honor,
24 thank you for giving us a few moments to go back and look over
25 some of the items that have been entered on the docket,

1 previously, so that we can try to address your concern with
2 respect to what appears to be a class that may not have voted
3 in favor of the plan.

4 Your Honor, I'd like to direct your attention to Docket
5 No. 503. Docket No. 503 is the motion filed by the First Lien
6 Steering Committee for approval of the disclosure statement and
7 the solicitation procedures in connection with soliciting votes
8 to accept or reject the plan.

9 THE COURT: Okay.

10 MR. DUBLIN: That motion was approved, your Honor, by
11 Docket No. 809. That is the order approving the solicitation
12 procedures requested by the First Lien Steering Committee in
13 the motion, again, that motion Docket 503.

14 Now, in Docket No. 503, the solicitation-procedures
15 motion, I'd like to direct your attention to paragraph 51 on
16 page 22.

17 THE COURT: All right. Hold on one --

18 MR. DUBLIN: It is under this --

19 THE COURT: Wait. That can't be right because the
20 solicitation motion didn't come -- oh, you're saying the motion
21 and then the order was adopted later.

22 MR. DUBLIN: Correct, your Honor.

23 THE COURT: So this is the motion.

24 MR. DUBLIN: The motion --

25 THE COURT: Okay.

1 MR. DUBLIN: -- for approval of the procedures.

2 THE COURT: Okay. 506. 503. Okay. Okay. And I'm
3 looking at the main document or the exhibit?

4 MR. DUBLIN: The main document, your Honor.

5 THE COURT: Okay.

6 MR. DUBLIN: It's paragraph 51 on page 22.

7 THE COURT: Okay. 51. Okay.

8 MR. DUBLIN: Okay. And if I just may read the
9 lead-in on paragraph 51, your Honor, which provides, "In
10 tabulating votes, the First Lien Steering Committee proposes
11 that the following hierarchy shall be used to determine the
12 claim amount associated with each holder's vote regardless of
13 the amount the claim holder may write in on the ballot."

14 I would then like to direct your attention, your Honor, on
15 page 23 --

16 THE COURT: Okay.

17 MR. DUBLIN: -- to paragraph D --

18 THE COURT: Um-h'm.

19 MR. DUBLIN: -- as in dog. And if I may read,
20 your Honor?

21 THE COURT: Okay.

22 MR. DUBLIN: "The claim amount contained in a proof
23 of claim that has been timely filed by the bar date or deemed
24 timely filed by the bankruptcy court under applicable law that
25 is not the subject of an objection or has not been withdrawn

1 provided, however, that ballots cast by holders whose claims
2 are listed in unliquidated or unknown amounts that are not the
3 subject of an objection will count for satisfying the
4 numerosity requirement of Section 1126(c) of the bankruptcy
5 code and will count as ballots for claims in the amount of \$1
6 solely for purposes of satisfying the dollar-amount provisions
7 of Section 1126(c) of the bankruptcy code."

8 THE COURT: Okay.

9 MR. DUBLIN: Your Honor, the two claims that we have
10 at issue or the two votes that we have at issue this morning in
11 connection with considering whether we will be able to confirm
12 the debtor's plan of reorganization are two litigation claims,
13 one filed by an uncertified class of homeowners that have not
14 as required by applicable bankruptcy rules sought prior
15 permission of the bankruptcy court to file --

16 THE COURT: Well --

17 MR. DUBLIN: -- a certified --

18 THE COURT: -- let's go back for a second --

19 MR. DUBLIN: Okay.

20 THE COURT: -- because I'm just trying to read
21 through the actual language. I know what --

22 MR. DUBLIN: Okay.

23 THE COURT: -- you're getting at bottom line.

24 MR. DUBLIN: Sure.

25 THE COURT: The language says, "A claim of amount

1 contained in the proof of claim," so, first, did either of
2 those -- and I'm going beyond what you even asked, but let's
3 just parse our way through the sentence. Did either of those
4 file a proof of claim?

5 MR. DUBLIN: Yes.

6 THE COURT: They both did because when I -- and
7 Stanley did?

8 MR. DUBLIN: Yes, your Honor.

9 THE COURT: Okay.

10 MR. DUBLIN: Stanley filed --

11 THE COURT: So they both --

12 MR. DUBLIN: Stanley filed two proofs of claim.

13 THE COURT: Okay. So they both filed proof of
14 claims, so the claim amount contained in the proof of claim had
15 been timely filed. Was it timely filed?

16 MR. DUBLIN: I believe so, your Honor.

17 THE COURT: And it wasn't the subject of an objection
18 or withdrawn.

19 MR. DUBLIN: It is not the subject of a pending filed
20 objection.

21 THE COURT: Okay. "Provided, however" -- were the
22 claims listed in unliquidated or unknown amounts?

23 MR. DUBLIN: Yes, your Honor.

24 THE COURT: They were listed in unliquidated and
25 unknown.

1 MR. DUBLIN: Yes, your Honor.

2 THE COURT: Okay. I know you said they were
3 litigation, but I didn't know if they were listed --

4 MR. DUBLIN: Yes.

5 THE COURT: -- on the schedules.

6 MR. DUBLIN: They were listed --

7 THE COURT: Okay.

8 MR. DUBLIN: -- on the schedules at litigation
9 claims. The --

10 THE COURT: Okay.

11 MR. DUBLIN: Now, there's a discrepancy between the
12 two Stanley has filed two claims --

13 THE COURT: Um-h'm.

14 MR. DUBLIN: -- which aggregate the dollar amount on
15 their ballot. However, in the debtor's schedules of
16 liabilities for Rhodes Design & Development and
17 Rhodes Ranch GP, those claims are listed as contingent, unknown
18 litigation claims with no dollar amount.

19 THE COURT: Okay. So they were listed in
20 unliquidated or unknown amounts.

21 MR. DUBLIN: Correct, your Honor.

22 THE COURT: Okay.

23 MR. DUBLIN: Again, with respect to the class ballot,
24 we have an uncertified class that did not seek leave of the
25 Court to file a class proof of claim which is required in order

1 to have a proper timely-filed proof of claim. That was not
2 done.

3 I will note, however, that the homeowners that purport to
4 be members of that class have been listed on the debtor's
5 schedules. All of the debtor's homeowners are listed. They
6 are all listed with contingent, unknown, unliquidated claims.

7 THE COURT: Okay. So they'd fall within paragraph D.

8 MR. DUBLIN: Correct, your Honor.

9 THE COURT: Okay.

10 MR. DUBLIN: Therefore, it is the First Lien Steering
11 Committee's view and position, your Honor, that notwithstanding
12 the dollar amount set forth on the ballots that were voted by
13 the uncertified class and Stanley that those claim numbers
14 should be recalculated at \$1 for purposes of satisfying the
15 dollar threshold under Section 1126 of the bankruptcy code, but
16 their votes will count for numerosity requirements.

17 THE COURT: Okay.

18 MR. DUBLIN: That said, your Honor, as we note in the
19 declaration of Brian Osborne, the numerosity requirement has
20 been satisfied even with the inclusion of those two votes as
21 votes to reject.

22 When we reduce the dollar amounts of the proofs of the
23 claim -- I'm sorry -- of the ballots that have been file by the
24 class as well as by Stanley to \$1, we also satisfy the dollar
25 threshold for Class C-1, general unsecured claims.

1 THE COURT: Okay. All right. Is there anyone here
2 on behalf of Stanley or their class?

3 MS. MARSHALL: I'm here, your Honor.
4 Janiece Marshall on behalf of Stanley Consultants.

5 THE COURT: Okay. Any comments in regard with
6 respect to allowing the ballot to count at anything more than
7 \$1?

8 MS. MARSHALL: Your Honor, we object. I mean, you
9 approved the procedure, but Stanley objects. It obviously has
10 incurred great losses and hundreds --

11 THE COURT: Well --

12 MS. MARSHALL: -- of thousands --

13 THE COURT: -- what basis --

14 MS. MARSHALL: -- of dollars.

15 THE COURT: -- is there? In light of this order,
16 what basis is there to object to classifying your vote as
17 anything more than \$1 in light of this order?

18 MS. MARSHALL: In light of this order, your Honor, I
19 don't believe --

20 THE COURT: Okay.

21 MS. MARSHALL: -- that I have any basis for
22 objection. Stanley would just reassert its prior objections
23 with respect to the valuation of the Arizona assets.

24 We don't think that they were properly considered, and
25 it's our understanding based on our expertise that the property

1 is actually a part of the property that's not in the flood
2 zone, and that the surrounding property involved -- and I guess
3 the doughnut as opposed to the doughnut hole, a lot of it can't
4 be developed.

5 So the arguments were made about respect to the valuation
6 of those assets, and we agree with the Court that we don't
7 think a proper valuation was made as to the Arizona assets.

8 THE COURT: Okay. But, now, just so I'm clear, you
9 didn't file a written objection to the plan.

10 MS. MARSHALL: We did not, your Honor.

11 THE COURT: Okay. All right. Thank you.

12 So if we disallow the Stanley claim down to \$1, where are
13 we on dollars? Do we still have --

14 MR. DUBLIN: Well, we still have the class,
15 your Honor --

16 THE COURT: Okay.

17 MR. DUBLIN: -- which --

18 THE COURT: The only thing that concerns me is --
19 (Colloquy not on the record.)

20 THE COURT: -- once you file the ballot summary
21 showing that class had rejected --

22 MR. DUBLIN: We would propose to file a new
23 declaration showing that that class has, in fact, accepted,
24 your Honor.

25 THE COURT: Does this order -- and you've had a

1 chance to digest it more than I have. Does this order permit
2 you to do that at confirmation? In other words, you had the
3 right to count them as rejecting --

4 MR. DUBLIN: Correct, your Honor.

5 THE COURT: -- before.

6 But now that you have filed something indicating that you
7 have a rejecting class, do we have a problem of people
8 presuming that they have rejected, and that we still have to
9 meet those?

10 MR. DUBLIN: If I may address that point, your Honor?

11 THE COURT: Um-h'm.

12 MR. DUBLIN: I believe that notwithstanding the
13 filing of the declaration that it would be within the purview
14 of a Court to authorize us to file a supplemental declaration
15 based on the prior order that you have entered approving the
16 solicitation procedures to correct that declaration.

17 Notwithstanding that fact and the issue that you raise,
18 your Honor, and that as to whether if that class rejected we
19 have satisfied the absolute-priority rule and the
20 best-interest-of-creditors test -- I apologize -- nobody has
21 objected to the plan on those grounds.

22 Nobody has sought to challenge the valuation contained in
23 the plan as to any of the assets or the declarations or the
24 going-concern valuation or liquidation analysis contained in
25 the disclosure statement which the Court approved by the

1 solicitation-proceedures order entered on December 1st.

2 Therefore, I do not believe there will be an impediment to
3 modifying that report as if somebody had came in this morning,
4 and it was within your authority to authorize somebody to
5 change their vote.

6 So I don't believe there's any provision of the bankruptcy
7 code or other law that I'm aware of that would prevent you from
8 authorizing us to submit a corrected declaration that satisfies
9 that we have, in fact, all five classes that voted that were
10 entitled to vote on the plan in accordance with the approved
11 disclosure statement.

12 And based on the specific terms contained in the order
13 approving the disclosure statement at Docket No. 809, that we
14 have satisfied 1126(c) with respect to each of those five
15 classes.

16 THE COURT: Okay. All right. Well, since under the
17 order these votes were entitled to be valued at \$1, and,
18 indeed, they would have been subject to objection -- in other
19 words, I assume that objections weren't filed because why go
20 through that process when you're just going to value them at
21 \$1. They were listed as contingent, and you said in the
22 class-action proof of claim --

23 MR. DUBLIN: Each of the individual homeowners have
24 been listed as unknown, unliquidated --

25 THE COURT: Okay.

1 MR. DUBLIN: -- contingent claims.

2 THE COURT: And how much was the class action? Did
3 they actually file a claim in that amount?

4 MR. DUBLIN: I believe they have filed a proof of
5 claim in that amount, an uncertified class.

6 THE COURT: Okay. But it is an uncertified class.

7 MR. DUBLIN: And, your Honor, I'm not sure if the
8 class is here today. We did ask if Stanley was. We may want
9 to check and see if anybody --

10 THE COURT: I did.

11 MR. DUBLIN: -- from the class --

12 THE COURT: Is anybody here --

13 MR. DUBLIN: -- is, actually.

14 THE COURT: -- on behalf of the class --

15 MR. DUBLIN: So --

16 THE COURT: -- on behalf of Kitec homeowners?

17 MR. DUBLIN: And, of course, they had notice of the
18 objection-deadline opportunity to oppose the plan.

19 THE COURT: Well, I am just concerned. In my mind --
20 and you may -- I'm not disagreeing that even if you had a
21 rejecting class that your analysis is not correct --

22 MR. DUBLIN: Understood, your Honor.

23 THE COURT: -- under (a)(8). I just raise the
24 concern, and I think if I had a rejecting class it's my job to
25 make sure you meet those requirements.

1 Maybe it makes sense to recess this for a very short time,
2 one week, to notify the class to file an amended ballot
3 summary, so that they are on notice that their ballots have
4 been treated in this manner.

5 That means (a)(8) is not raised at all. That means that
6 whether I'm right or wrong there's no appealable issue as to
7 whether or not you have met cram-down requirements.

8 (Colloquy not on the record.)

9 THE COURT: So like I said, I'm just concerned about
10 the notice aspect.

11 MR. DUBLIN: I understand that concern, your Honor.

12 THE COURT: Do you want to confer for a few minutes
13 knowing -- and I would be prepared to confirm the plan, but for
14 that amendment because while I'm -- you know, that I wasn't
15 totally pleased with the affidavit in the sense that I had been
16 told we meet the cram-down requirements.

17 The point is I don't need to get there. You do have an
18 overall settlement that meets the A&C Properties test. The
19 only issue in my mind was whether or not because cram-down is a
20 whole different requirement.

21 MR. DUBLIN: I understand your concerns, your Honor.

22 (Colloquy not on the record.)

23 THE COURT: So my thought is that, perhaps, we should
24 recess this for one week. You immediately amend your statement
25 and a notice that they have got to -- if they object to -- if

1 they have some legal reason to object to that
2 recharacterization, they would have 24 hours to file something.

3 MR. DUBLIN: Your Honor, I appreciate that. What I
4 would propose if possible if this is the way you're ruling, I
5 would request that the Court take notice of the provisions of
6 the order that have been approved and permit us to submit a
7 revised declaration this afternoon and confirm the plan based
8 on the revised declaration, so that we do not need to come back
9 as I believe that based on the plain letter of the order
10 approving the disclosure statement that if the class has
11 already been on notice as to what the Court will be reviewing
12 in connection with confirmation of the plan and how the voting
13 procedures are to be tabulated that we do satisfy 1129(a)(8),
14 and that's all of the factors of 1129 to confirm the plan
15 today.

16 However, if the Court is not willing to do that absent the
17 submission of an amended declaration and specifically serving
18 that declaration on the class, I would hope that would be
19 possible that we essentially have a contingently-confirmed
20 plan. And absent the class filing a pleading with the court by
21 a date certain, that the confirmation order --

22 THE COURT: I could do that --

23 MR. DUBLIN: -- could be entered without a hearing.

24 THE COURT: -- because the only issue is whether or
25 not -- and, perhaps, I am being -- you know, perhaps, in light

1 of the order, we don't have a problem.

2 But since you filed the -- the report was filed showing a
3 rejection and not even -- I don't think the ballot summary even
4 (indiscernible) to say that you reserve the right to reclassify
5 at confirmation in connection with that order, and maybe that's
6 contained someplace else, that specific language.

7 MR. DUBLIN: I --

8 THE COURT: But I would --

9 MR. DUBLIN: I would have to go back --

10 THE COURT: -- be prepared --

11 MR. DUBLIN: -- and check.

12 THE COURT: -- to contingently confirm under that
13 basis.

14 My concern is the notice because someone could have
15 been -- the class could have been misled. I don't understand
16 what their good-faith argument would be to oppose that.

17 (Colloquy not on the record.)

18 MR. DUBLIN: And I would like to note, your Honor,
19 that the voting report was filed subsequent to the objection
20 deadline, so that if the class was seeking to affirmatively
21 prevent the plan from being confirmed --

22 THE COURT: But that's different. See, the problem
23 is I have to go through an (a)(8) analysis --

24 MR. DUBLIN: I understand, your Honor.

25 THE COURT: -- you know, so you're right, the

1 objections. But (a)(8), it is your affirmative job to show
2 that you meet cram-down.

3 So if I have a rejecting class, they could have presumed
4 that we go through that analysis, and they could have thought,
5 well, you know, based upon those two declarations I see and
6 based upon the fact that Rhodes is getting something I'm going
7 to assume the Court won't approve it. I'm sure they didn't go
8 through that analysis, but --

9 MR. DUBLIN: Yeah.

10 THE COURT: -- it's a due-process issue.

11 They could have relied on your ballot summary showing a
12 rejection unless you had specifically reserved someplace in the
13 disclosure statement and plan in that order that at
14 confirmation you can modify your ballot summary.

15 This is not a situation where somebody can come in and
16 modify. This is a situation where you're saying, I'm sorry, we
17 said you rejected, but you didn't really have that opportunity
18 because you weren't qualified.

19 And you may have reserved that someplace, but, again, I'm
20 not going to go through all those pleadings. Do you want a few
21 more minutes to think about these various options?

22 MR. DUBLIN: Please, your Honor.

23 THE COURT: Okay. Because, again, this affects
24 appealability.

25 MR. DUBLIN: I understand.

1 THE COURT: So I have no time constraints except I
2 have the 1:30 confirmation, so --

3 MR. DUBLIN: And I'm hopeful this will take
4 ten minutes --

5 THE COURT: Yeah.

6 MR. DUBLIN: -- your Honor.

7 THE COURT: I don't think so, either. I just want to
8 let you know.

9 Thank you.

10 MS. CHO: And, your Honor, we do have -- pardon me
11 for the interruption. We do still have a few matters on
12 calendar left.

13 THE COURT: Yeah. But they won't take long.

14 MS. CHO: Correct.

15 THE COURT: They're just the fee applications.

16 MR. CHO: Right.

17 THE COURT: Correct?

18 MR. CHO: Correct.

19 THE COURT: Thank you.

20 (Recess at 10:30:04 a.m.)

21 (Court reconvened at 10:37:07 a.m.)

22 THE CLERK: Bankruptcy court is back in session.

23 (Colloquy not on the record.)

24 THE COURT: Be seated.

25 MR. DUBLIN: Thank you again, your Honor. Focussing

1 again on your concerns, I think they are twofold. One is with
2 respect to the voting report and the reliance that somebody may
3 have on the voting report and then an analysis that may be
4 undertaken by the Court under 1129(a)(8) or 1129(b)
5 notwithstanding the absence of actually filing an objection.

6 The disclosure statement which was approved by the Court
7 does not permit anybody to undertake that reliance. On page --

8 THE COURT: Let me --

9 MR. DUBLIN: I'm sorry. Do --

10 THE COURT: Give me a docket number first.

11 MR. DUBLIN: It's --

12 (Colloquy not on the record.)

13 THE COURT: Is it where we were?

14 MR. DUBLIN: It's the second amended disclosure
15 statement. It's 98 (sic).

16 THE COURT: Well, as far as the disclosure statement
17 itself goes, we're going to have to rely on the one that was
18 actually the final one.

19 MR. DUBLIN: 798, your Honor.

20 THE COURT: 798. Okay. Oh, I have a hard copy here.
21 Yes. Okay.

22 MR. DUBLIN: And it's on Romanette (iv) to (v), so
23 it's just in the first couple of pages in in bold --

24 THE COURT: Okay.

25 MR. DUBLIN: -- all caps.

1 THE COURT: Okay. Let's see. What page? I have a
2 hard copy here. Oh, IV. Okay.

3 MR. DUBLIN: Roman Numeral IV on the bottom --

4 THE COURT: All right.

5 MR. DUBLIN: -- to Roman Numeral V. It's before you
6 get to the table of contents.

7 THE COURT: Okay.

8 MR. DUBLIN: May I approach, your Honor?

9 THE COURT: Is it --

10 (Colloquy not on the record.)

11 THE COURT: Tell me what page it is. I have a hard
12 copy.

13 MR. DUBLIN: It's Romanette (iv) --

14 THE COURT: Oh --

15 MR. DUBLIN: -- I-V.

16 THE COURT: -- I'm sorry. I'm thinking you mean once
17 we get inside that report.

18 MR. DUBLIN: Yes.

19 THE COURT: Excuse me.

20 MR. DUBLIN: Before you --

21 THE COURT: Okay. Yes.

22 MR. DUBLIN: Before you --

23 THE COURT: Thank you.

24 MR. DUBLIN: -- even get there --

25 THE COURT: Um-h'm.

1 MR. DUBLIN: -- the pages that people usually read --

2 THE COURT: Right.

3 MR. DUBLIN: -- on Romanette (iv) to Romanette (v),
4 bold, all caps, if I may read, your Honor?

5 THE COURT: Um-h'm.

6 MR. DUBLIN: "Objections to confirmation of the plan
7 must be filed and served on or before January 4th, 2010, in
8 accordance with the solicitation notice that the First Lien
9 Steering Committee filed and served on holders of claims,
10 holders of interests, and other parties in interest.

11 If objections to confirmation are not timely served and
12 filed in compliance with the solicitation notice, they may not
13 be considered by the bankruptcy court."

14 THE COURT: So --

15 (Colloquy not on the record.)

16 THE COURT: -- are you saying that --

17 MR. DUBLIN: I'm saying, your Honor, that the absence
18 by the class to file an objection to the plan under 11 --

19 THE COURT: No. That can't be right. I'll tell you
20 why is because the objection period is due before the ballots
21 are due, so, therefore, an unsecured creditor wouldn't know
22 beforehand that they had to file an objection.

23 MR. DUBLIN: I understand that, your Honor. However,
24 to the extent that Mr. Rhodes would have been receiving a
25 recovery on account of his equity interests, the plan would

1 have been violating the absolute-priority rule.

2 And since the plan contemplated that unsecured creditors
3 were not going to receive a full recovery on account of their
4 claims, it is the same argument that he would not be able to
5 retain a recovery on account of his equity interests --

6 THE COURT: No.

7 MR. DUBLIN: -- by --

8 THE COURT: That only comes into play if the plan is
9 rejected.

10 (Telephone ringing at 10:40:35 a.m.)

11 MR. DUBLIN: I apologize for the ringing phone,
12 your Honor. People were -- while we were in recess. Under --

13 THE COURT: I don't think a failure to vote in favor
14 of the plan requires an objection. It's not an objection to
15 the plan.

16 MR. DUBLIN: The issue that you're reserving, that
17 we're talking about now with 1129(a)(8) --

18 THE COURT: Correct.

19 MR. DUBLIN: -- would be an objection to the plan.
20 That we could not satisfy that requirement.

21 THE COURT: I don't think so. In other words,
22 it's --

23 MR. DUBLIN: Moreover, your Honor, all of the
24 individual homeowners, none of which were in this class, this
25 uncertified class, they also received the

1 solicitation-procedures notice and were aware that if they had
2 voted which none of them did -- if they had voted, that their
3 claims would have been \$1, but none of those homeowners who
4 purport to be represented by this class even voted on the plan.

5 THE COURT: Well, and let's go back. It says, "Not
6 withstanding 510" -- let's see. "If all the requirements" --
7 I'm looking at (b), 1129(b).

8 (Colloquy not on the record.)

9 THE COURT: "If all the requirements are met other
10 than paragraph 8, the Court on request of the proponent shall
11 confirm if the plan does not," so your problem is they don't
12 have to object, but you haven't met that.

13 It's your job. If they reject, then it goes into the
14 alternative which was you can confirm by showing you've met new
15 value.

16 Your problem here is that you have led them to believe --
17 I mean, I can go through the (a)(8) analysis, but I'm not going
18 to do it today. I'm going to make you --

19 MR. DUBLIN: I --

20 THE COURT: -- brief it.

21 MR. DUBLIN: I understand that, your Honor, and so I
22 would rely on the order approving the disclosure statement that
23 those claims are counted for voting purposes or that claim of
24 the class at \$1 just like Stanley's claim is at \$1.

25 They are not here today at the confirmation hearing which

1 they were noticed of, so they did receive, obviously, the
2 voting report which I believe based on a review of the order
3 needs to be corrected. I think you can take judicial notice of
4 the order that you entered, and that the proper --

5 THE COURT: Yeah. But you're the ones.

6 MR. DUBLIN: I understand that.

7 THE COURT: I mean, arguably, you could waive that.

8 MR. DUBLIN: I understand, your Honor, and we will
9 submit this --

10 THE COURT: You can do one of two things. You can
11 submit your briefs on the briefing and assume they have the
12 right to vote or you can adjourn this for one week, amend your
13 ballot, give them 24 hours to object to the reclassification --
14 the amendment of the ballot summary, and I'll confirm it if
15 they don't. That's your choice.

16 MR. DUBLIN: Okay. Your Honor, we will take option
17 No. 2.

18 THE COURT: Okay. Door No. 2.

19 MR. DUBLIN: We will submit if not later today
20 tomorrow a revised declaration of Mr. Osborne with respect to
21 the votes. We will send that out on notice.

22 When would you like the -- if anybody has an objection to
23 the new ballot or the new ballot tabulation, when would you
24 like those to be interposed by, so that we can come back and
25 address that issue before the Court?

1 THE COURT: Let's see. So you get that out tomorrow.
2 They've got to file it within 24 hours. Well, let's do
3 48 hours, so they would have to file it. You'll get it out
4 by --

5 MR. DUBLIN: I would --

6 THE COURT: You're going to --

7 MR. DUBLIN: Hopefully, we'd be able to get it out by
8 tomorrow, though I'll ask Mr. Osborne to confirm that we'd be
9 able to get that notice --

10 THE COURT: And who --

11 MR. DUBLIN: -- out --

12 THE COURT: -- filed that --

13 MR. DUBLIN: -- tomorrow.

14 THE COURT: -- on their behalf? Is it somebody on
15 ECF?

16 MR. DUBLIN: The individual that filed the ballot?

17 THE COURT: The proof of claim, um-h'm --

18 MR. DUBLIN: The proof of claim?

19 THE COURT: -- or the ballot.

20 MR. DUBLIN: I don't know offhand who signed it. I
21 believe it was one of the homeowners.

22 THE COURT: Well, you probably have lots of grounds
23 to object to it, but you didn't, so all right. So they'll have
24 48 hours to object to the amendment of the ballot, and that
25 means you'll get it out to them -- when is today? Ooh, today

1 is the 14th.

2 (Colloquy not on the record.)

3 THE COURT: So they'll have 'til -- I'm afraid to use
4 holidays, so they'll have by the 19th by 5:00 p.m. That's more
5 than 48 hours, but I'm concerned with the business days. As
6 long as I'm being persnickety, let's not create any more
7 problems.

8 (Colloquy not on the record.)

9 THE COURT: And then we can come back on Thursday or
10 Friday if necessary.

11 MR. DUBLIN: I'd prefer Thursday, your Honor.

12 THE COURT: Okay. Thursday at 9:30 if necessary?

13 MR. DUBLIN: Sure.

14 (Colloquy not on the record.)

15 MR. DUBLIN: (Indiscernible) asked a good question.
16 The amended voting report that we're going to file and serve,
17 you want that served on --

18 THE COURT: Just the two parties that you're seeking
19 to reclassify based upon the order.

20 MR. DUBLIN: Okay.

21 THE COURT: And the only grounds to file a response
22 is -- yeah. You need to put in there that their votes are
23 being --

24 MR. DUBLIN: In accordance with the
25 disclosure-statement --

1 THE COURT: That's right.

2 MR. DUBLIN: -- order.

3 THE COURT: That's right, and that's the only basis
4 for objecting to that amendment. This is not opening up
5 anything new. This is just, no, you can't do this because
6 under this paragraph you don't fit.

7 MR. DUBLIN: Understood, your Honor.

8 THE COURT: Okay.

9 MS. MARSHALL: Your Honor, I just want to confirm
10 that Stanley had the right to lodge an objection if upon
11 reflection it decided to do so.

12 THE COURT: It --

13 MS. MARSHALL: We're one of the classes that you --

14 THE COURT: It came to you quickly, so I'll allow
15 you, but, again, this is only on the grounds that, you know, it
16 has to be some basis that under (d) they're not entitled to
17 treat you as \$1.

18 MS. MARSHALL: Thank you, your Honor.

19 MR. DUBLIN: And we will make sure that the cover
20 notice of the amended declaration provides that.

21 THE COURT: Correct. And then we can come back the
22 21st at 9:30. If there is nothing filed -- well, what I'd like
23 you to do is on the 20th file something that indicates that
24 either there was or was not --

25 MR. DUBLIN: We will --

1 THE COURT: -- a response.

2 MR. DUBLIN: If there is nothing filed, we will file
3 a certification of no objection.

4 THE COURT: Great.

5 MR. DUBLIN: And if there is something filed, we will
6 contact chambers.

7 THE COURT: Okay. And I would also suggest that you
8 amend your -- cleaning up the other problem, amend your
9 certificate of service to specify that those -- if this is the
10 case -- and I assume it was --

11 MR. DUBLIN: That the exhibits are the same.

12 THE COURT: -- the exhibits --

13 MR. DUBLIN: Yes, your Honor.

14 THE COURT: -- were attached.

15 And by the way, these recesses have given me the
16 opportunity to go back and review those exhibits which I had
17 looked at, initially, but, obviously --

18 MR. DUBLIN: Understood, your Honor.

19 THE COURT: So it's given me --

20 MR. DUBLIN: It's been a while.

21 THE COURT: -- the opportunity to review those
22 exhibits such that assuming that we don't have to address the
23 new-value issue I find that the plan meets the requirements of
24 1129, and the plan can be confirmed.

25 And I'm not even suggesting that if there is a rejecting

1 class you don't meet the cram-down requirements, just my
2 analysis didn't go to that length --

3 MR. DUBLIN: Understood, your Honor.

4 THE COURT: -- for the very reasons I have told you,
5 okay, so --

6 MR. DUBLIN: Understood.

7 THE COURT: So if you have met (a)(8), that is you
8 have all accepting -- if you do not have a rejecting class,
9 then you've met the requirements of 1129, and the plan can be
10 confirmed.

11 MR. DUBLIN: And just so I'm clear, your Honor, we
12 will not need a hearing, then, on the 21st if there are no --

13 THE COURT: That's correct.

14 MR. DUBLIN: -- objections or responses to the
15 amended voting report.

16 THE COURT: That's correct. That's correct.

17 MR. DUBLIN: And then the only issue that we'll be
18 addressing on the 21st will be the responses to the voting
19 report.

20 THE COURT: That's correct.

21 MR. DUBLIN: Okay.

22 (Colloquy not on the record.)

23 THE COURT: All right. Did you have a proposed set
24 of findings that we should go through with respect to the plan?

25 MR. DUBLIN: We did, your Honor. We uploaded that on

1 the 11th --

2 THE COURT: Okay.

3 MR. DUBLIN: -- and served it on the parties.

4 THE COURT: H'mm.

5 MR. DUBLIN: I think, your Honor --

6 THE COURT: Was it --

7 MR. DUBLIN: -- it will need --

8 THE COURT: -- uploaded?

9 MR. DUBLIN: It will need some modification based on
10 the issues that we've discussed today, so --

11 THE COURT: Did you upload it as an order as opposed
12 to in the docket?

13 (Colloquy not on the record.)

14 THE COURT: I think you must have.

15 MR. DUBLIN: I think it was uploaded as an order.

16 THE CLERK: (Indiscernible) --

17 THE COURT: See, don't --

18 THE CLERK: -- (indiscernible).

19 THE COURT: You can't do that. You can't upload
20 those as proposed orders in the order box because I don't sign
21 orders before -- you have to upload a proposed order ECF, so
22 that everybody could see what your proposed order is, and I get
23 it, but don't put it in the order box because we don't get it.

24 MR. DUBLIN: Okay, your Honor.

25 THE COURT: And it wasn't on the docket, either.

1 (Colloquy not on the record.)

2 MR. DUBLIN: Your Honor, then I propose that we
3 upload it onto the docket --

4 THE COURT: Yes.

5 MR. DUBLIN: -- today.

6 THE COURT: Yes.

7 MR. DUBLIN: And then we can address any issues with
8 the order that you may have on the 21st assuming if you have
9 any -- we'll have to make some modifications based on --

10 THE COURT: Okay. So upload --

11 MR. DUBLIN: -- the cram-down.

12 THE COURT: -- the proposed findings, and I will --

13 (Colloquy not on the record.)

14 THE COURT: Maybe it makes sense that we go ahead and
15 on the 21st, so we can finish up those findings. We will have
16 a hearing on the 21st which will do one or both things, one
17 just finally approve the findings and if there's any objections
18 by anybody discuss those, and then, two, if we have to go
19 through new value, then we'll discuss that.

20 MR. DUBLIN: Okay.

21 THE COURT: If you have an objection based upon your
22 reballoting -- well, the first step I think is to address
23 whether or not they're entitled to a ballot.

24 If the votes aren't -- if they're not in accordance with
25 that order entitled to have their claims sought at \$1, then

1 that takes care of that.

2 MR. DUBLIN: Thank you, your Honor.

3 THE COURT: All right? All right. So thank you on
4 that, and let's finish up.

5 Next, finally, we have the motion No. 9, the motion to
6 extend time.

7 MS. CHO: Your Honor, Shirley Cho again for the
8 debtors. This is a protective motion to extend the
9 January 31st 365(d)(4) extension --

10 THE COURT: All right. That's granted.

11 MS. CHO: -- order.

12 Thank you.

13 THE COURT: And I'm sorry, Mr. Larson. I skipped
14 No. 5.

15 (Colloquy not on the record.)

16 MR. LARSON: Good morning, your Honor. This is our
17 second fee application. It is reset for today's hearing.
18 There has been no opposition.

19 THE COURT: All right. And that's approved.

20 MR. LARSON: Thank you.

21 THE COURT: And then we have No. 10, the global
22 settlement.

23 (Colloquy not on the record.)

24 MS. CHO: For the record, Shirley Cho again,
25 your Honor, for the debtors. With respect to this motion, it's

1 really a follow-on motion to a motion that your Honor has
2 previously approved to pick up three other debtors that we
3 omitted to include the first time around.

4 THE COURT: All right. So that's granted.

5 MS. CHO: Thank you, your Honor.

6 THE COURT: And then we had the Parsons, Behle.

7 (Colloquy not on the record.)

8 MR. BECKETT: Thank you, your Honor. Tom Beckett for
9 -- it's Parsons, Behle. Your Honor, the presentation of this
10 second fee application has not been entirely neat.

11 I was advised by the court clerk yesterday afternoon that
12 the hearing on this had been vacated. I wasn't certain if the
13 hearing that had been set for 1:30 had been vacated --

14 THE COURT: Oh --

15 MR. BECKETT: -- or the one set for this morning had
16 been vacated.

17 THE COURT: -- I think the point is that somehow it
18 may have got set for 1:30 and shouldn't have been, so, yes,
19 we'll go ahead, and I think there's no problem. It's an
20 amended notice at 9:00 o'clock, and we have an amended notice,
21 so we'll go ahead --

22 MR. BECKETT: Yes.

23 THE COURT: -- and consider that.

24 MR. BECKETT: I appreciate that, your Honor. That
25 was my fault. I set it at 1:30 and then saw that it had been

1 put on the schedule for today, and so I had it moved to 9:00.
2 I would be perfectly happy to come back at 1:30. I did not
3 want to inconvenience the Court.

4 THE COURT: No. That's fine --

5 MR. BECKETT: We're here --

6 THE COURT: -- because I think anybody who would have
7 an interest would be here this morning, so I have no problem
8 with proceeding early.

9 MR. BECKETT: Thank you. I appreciate that. There
10 have been no objections --

11 THE COURT: All right.

12 MR. BECKETT: -- to this.

13 THE COURT: And that's granted.

14 MR. BECKETT: I appreciate it.

15 THE COURT: I guess, arguably, what I might do at
16 1:30 is just, quote, "call the case" just to see if somebody
17 happens to show up. But --

18 MR. BECKETT: Yeah. I --

19 THE COURT: And if I do --

20 MR. BECKETT: I will be --

21 THE COURT: -- I'll let you know.

22 MR. BECKETT: Would you like me to be here for that?

23 THE COURT: If it doesn't inconvenience you --

24 MR. BECKETT: It --

25 THE COURT: -- you might want --

1 MR. BECKETT: I have no place else --

2 THE COURT: -- to do that.

3 MR. BECKETT: -- to be.

4 THE COURT: Okay.

5 MR. BECKETT: I have no place else I'd rather be,
6 so --

7 (Colloquy not on the record.)

8 THE COURT: Oh, yeah.

9 MR. BECKETT: Thank you.

10 THE COURT: Well, it's Chapter 13 day. I don't know.
11 You may want to --

12 (Colloquy not on the record.)

13 THE COURT: There was only 1,000 --

14 (Colloquy not on the record.)

15 THE COURT: There's literally 1,000 matters on
16 calendar, so I don't know.

17 (Colloquy not on the record.)

18 MS. CHO: Your Honor, Shirley Cho again for the
19 record. With respect to next Thursday's hearing at 9:30 a.m.,
20 would it be possible for parties who wish to appear
21 telephonically --

22 THE COURT: Yes. Court Call will be allowed.

23 MS. CHO: Thank you.

24 THE COURT: And assuming -- well, let me have a
25 caveat. If it turns out we need argument, those parties who

1 need to argue the matter should be present.

2 If there is no argument, if it's just a matter of
3 pro forma going through findings in brief, you know,
4 wordsmithing, then anybody and everybody can be on Court Call.

5 MS. CHO: Thank you, your Honor.

6 THE COURT: All right? All right. On one hand, I
7 guess I'm sorry for being so persnickety, but I guess that's
8 why I get the big bucks, and, more importantly, I never want to
9 see things remanded to me, so all right.

10 Thank you very much.

11 (Colloquy not on the record.)

12 UNIDENTIFIED SPEAKER: Thank you, your Honor.

13 MR. BECKETT: Thank you, your Honor.

14 THE CLERK: All rise.

15 (Court concluded at 10:54:17 a.m.)

16 (Court reconvened at 01:45:44 a.m.

17 with J. Thomas Beckett, Esq., only present.)

18 THE CLERK: All rise.

19 (Colloquy not on the record.)

20 THE CLERK: Bankruptcy court is now in session.

21 (Colloquy not on the record.)

22 THE COURT: Be seated.

23 (Colloquy not on the record.)

24 THE COURT: All right. Before we start, anyone here
25 on Rhodes?

1 (Colloquy not on the record.)

2 MR. BECKETT: Tom Beckett, Parsons, Behle & Latimer,
3 Salt Lake City.

4 THE COURT: Okay. And no one else is here. All
5 right. So that was approved.

6 MR. BECKETT: Thank you.

7 THE COURT RECORDER: Is your telephone on silent?

8 MR. BECKETT: Yes.

9 THE COURT RECORDER: I just heard something over the
10 PA system. Sorry.

11 MR. BECKETT: Thank you, your Honor, and thank you to
12 your staff --

13 THE COURT: Okay.

14 MR. BECKETT: -- for accommodating us. I appreciate
15 it.

16 THE COURT: All right. Thank you.

17 MR. BECKETT: Your Honor, may I be excused?

18 THE COURT: Yes, please. Thank you. I'm sure you
19 don't want to stay for this.

20 (Court concluded at 01:46:23 p.m.)

21

22

23

24

25

1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.
4
5

6 /s/ Lisa L. Cline

01/25/10

7 Lisa L. Cline, Transcriptionist

Date